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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY



File:



Office: California Service Center

Date:

FEB 28 2003

IN RE: Applicant:



Application: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. §1254

IN BEHALF OF APPLICANT: Self-represented

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. §103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. §103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The case is now reopened and is before the AAO on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States without a lawful admission or parole in 1987. In his decision, the director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254, because the applicant failed to establish he was a citizen of Honduras.

On May 24, 2001, the Director, Administrative Appeals Office, dismissed the appeal because it was determined that the applicant claimed Guatemalan citizenship.

Pursuant to 8 C.F.R. §103.5(b), the Administrative Appeals Office will sua sponte reopen or reconsider a decision under Section 210a of the Immigration and Nationality Act when it determines that manifest injustice would occur if the prior decision were permitted to stand. *Matter of O--*, I.D. 3098 (Comm. Feb. 14, 1989)

The applicant furnished a copy of a motion to reopen that indicated that he was a Honduran national and not a Guatemalan citizen. The AAO relied upon *Matter of Ognibene*, 18 I&N DEC. 425 (Reg. Comm, 1983) in rendering its decision. That case held that in the event of a dual national alien nonimmigrant, the nationality claimed or established by him at the time of his entry into the United States must be regarded as his sole or operative nationality for the duration of his temporary stay in the United States.

The director found that the submission of a birth certificate showing birth in Guatemala, a biographic report showing Guatemalan nationality, a signed statement attesting to birth in Guatemala and the assertion that death threats were made against him by members of the Guatemalan Organization of Revolutionary Armed People (ORPA) goes well beyond allegations that data entry errors were made in this matter. The applicant's submission of an uncertified copy of a Honduran passport on appeal only contradicts other evidence in the record. Following *Ognibene*, the applicant submitted documentation to initially establish that he is a citizen and national of Guatemala. However, Service records indicate that records dating back to the applicant's entry into the United States show his citizenship to be Honduran, not Guatemalan. The only time Guatemalan citizenship is claimed is in regards to the applicant's asylum application. In his motion to reopen, the applicant contends that this was done without his knowledge.

As the applicant has addressed the single deficiency stated by the director, the case should have been reopened at that point and fully adjudicated on its merits.

The case will be remanded for the purpose of a new decision addressing the above. The applicant will be permitted to appeal without a fee in the event of a new decision of denial.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.